

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE WIRE HARNESS
SYSTEMS ANTITRUST

MDL NO. 2311

STATUS CONFERENCE

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, March 13, 2013

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1 Detroit, Michigan

2 | Wednesday, March 13, 2013

3 at about 10:17 a.m.

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— — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Marianne O. Battani presiding.

10 You may be seated. The Court calls In Re:
11 Automotive Parts Antitrust Litigation.

12 THE COURT: Good morning. I'm looking at all of
13 you to see if this is thinning out any at all, but I don't
14 think so. Okay. We will follow the same procedures; if you
15 would please give your name before you speak so that we can
16 have an accurate record.

17 MR. WILLIAMS: Thank you, Your Honor. My name is
18 Steve Williams, I represent the end payors. I know we have
19 an agenda, but there was one thing we wanted to bring to the
20 Court's attention at the outset, which is that the end payors
21 and auto dealers have entered into a settlement with one of
22 the defendants and intend very soon to present the papers, we
23 are finalizing those papers, but we wanted the Court to be
24 aware of that.

25 THE COURT: Can you tell me the defendant?

1 MR. WILLIAMS: They have asked at this point that
2 we not do so.

3 THE COURT: All right.

4 MR. WILLIAMS: Thank you.

5 THE COURT: That's nice but it would be nice if it
6 was more global, should I say? Okay. All right. Let's go
7 through the agenda. The first thing is the wire harness.
8 Who is going to speak? Mr. Fink.

9 MR. FINK: David Fink, liaison counsel for the
10 direct purchaser plaintiffs in all of the cases.

11 With respect to wire harnesses, there's -- well,
12 there's really no issue on service right now for any of the
13 plaintiffs. And with respect to depositions -- I don't mean
14 to skip number two, but with respect to depositions
15 Greg Hansel will be speaking to that.

16 THE COURT: Okay.

17 MR. FINK: So, Your Honor, I guess I will just
18 defer to Mr. Hansel right now on that.

19 THE COURT: All right. Mr. Hansel.

20 MR. HANSEL: May it please the Court, good morning,
21 Your Honor. I'm Greg Hansel, one of the interim lead counsel
22 for direct purchaser plaintiffs in all cases except for
23 bearings.

24 Item 3 under wire harness, which also appears under
25 instrument panel clusters and heater control panels as well

1 as anti-vibration rubber parts, one of the new cases.

2 THE COURT: That's a new one.

3 MR. HANSEL: I would like to give the Court just an
4 overview of what the issue is, and then I believe I can
5 report to the Court some very good progress that the parties
6 have made on that issue.

7 THE COURT: Okay.

8 MR. HANSEL: So as the Court is aware, Exhibit 1 to
9 the agenda is a table of individuals who have -- who are
10 serving time in U.S. prison as a result of sentences in the
11 related criminal cases. The plaintiffs are concerned that if
12 those individuals if and when, you know, they are released
13 from U.S. prisons or possibly transferred under a statute
14 that may permit them to serve part of their sentence in a
15 prison in their home country of Japan, we are concerned that
16 they may go to Japan and they may be difficult to depose
17 under Japanese law. So we have approached the corporate
18 defendants who employ those gentlemen and asked them to agree
19 to produce them in the United States for depositions at some
20 appropriate agreed time after they are released from prison.

21 As the Court is aware, all three groups of
22 plaintiffs have reached an agreement with Furukawa and the
23 four men who are employed by Furukawa on the list, and on
24 Friday the 8th of March the plaintiffs filed a document
25 entitled notice of submission of stipulation and agreement

1 and order with respect to depositions of Messrs. Funo,
2 Nagata, Ukai and Hayashida, and so that is a matter that is
3 under submission to the Court and it provides that they will
4 be produced for deposition in the United States at an agreed
5 time and place.

6 THE COURT: What was the last one after --

7 MR. HANSEL: Hayashida.

8 THE COURT: Is he on this list?

9 MR. HANSEL: Apparently not. I guess he's not
10 incarcerated but they have agreed to produce him nonetheless.

11 THE COURT: All right. Thank you.

12 MR. HANSEL: We are in discussions with Denso and
13 Yazaki and we have made very good progress in those
14 discussions.

15 THE COURT: Can I back up just so I can get this
16 right? You indicated on March 8th there was a stipulation
17 filed. Do you have a docket number on that?

18 MR. HANSEL: Yes, it is number 130.

19 THE COURT: Thank you.

20 MR. HANSEL: Okay.

21 THE COURT: Okay. Denso and Yazaki.

22 MR. HANSEL: Yes. Those discussions are going
23 well, and we are optimistic that we will reach a similar
24 agreement with Denso and Yazaki and their associated
25 employees. The matter does have some time sensitivity

1 because one of the Yazaki employees is scheduled, according
2 to our understanding, to be released July 10th, 2013, and
3 there is also some uncertainty regarding when two other
4 Yazaki employees may be transferred to serve part of their
5 sentence in Japan, which could happen conceivably even
6 earlier than July, and we appreciate Yazaki sharing that with
7 us that that was in process and was a possibility.

8 So if we don't happen to resolve it the plaintiffs
9 will present a motion to the Court, but it is premature to
10 concern ourselves with that because we are still hopeful that
11 we will reach agreement on the subject. Thank you.

12 THE COURT: Thank you. Okay.

13 MR. MAJORAS: Good morning, Your Honor.

14 John Majoras from the Jones Day firm on behalf of Yazaki.
15 And what Mr. Hansel just said about the depositions, we
16 agree, that is the state of play in terms of discussions. We
17 believe and I understand from Denso's counsel, who also has
18 individuals at issue, that they believe a resolution is in
19 the offing. We are working diligently to do that. Obviously
20 conferring with individuals while they are in the Lompoc
21 prison takes some time, there are some translation issues, we
22 have explained that to plaintiffs, they have been
23 understanding in terms of trying to give us time to do that,
24 and we hope we will not be in a position where a motion will
25 be necessary where we then have to debate these issues.

1 THE COURT: Okay. Good, good. Did Denso want to
2 say anything or was that enough?

3 (No response.)

4 THE COURT: Okay. Let's go on then. Is there
5 anything else on wire harness?

6 MR. FINK: No, Your Honor.

7 THE COURT: Instrument panel clusters?

8 MR. FINK: We don't believe -- since we have
9 addressed this issue regarding the depositions we are not
10 aware of anything that needs to be brought to the Court's
11 attention on instrument panel clusters.

12 THE COURT: Okay. Any defendant?

13 (No response.)

14 THE COURT: No. All right. Thank you. The fuel
15 senders?

16 MR. FINK: On fuel senders, again, Mr. Hansel can
17 speak to this, but we have -- it is not referenced here but
18 since the preparation of this agenda another -- a case has
19 been filed for a direct plaintiff.

20 THE COURT: I looked at the docket at that and it
21 said a sealed complaint. I was a little confused by that.
22 Is there something going on here that --

23 MR. FINK: No secrets from you, Your Honor.

24 THE COURT: -- I need to know about?

25 MR. FINK: What has occurred in terms of the filing

1 is that we filed the case, it was assigned to Judge Tarnow.
2 We filed it as a redacted complaint with certain confidential
3 information. When we do that we then file an unredacted
4 version under seal with the Court where the case has been
5 assigned. Because it hasn't yet been reassigned here we
6 still did not think it was a good idea to file the sealed
7 complaint with Judge Tarnow so we filed that here, and the
8 difference is simply there's some redacted information --
9 confidential information in the complaint.

10 THE COURT: All right. Presumably Judge Tarnow
11 will transfer that to me as soon as he gets around to it.

12 Bernie, would you please make a note of that?

13 Thank you. I was just curious when I saw that, I
14 thought, uh-oh, what are they getting into. Okay. I've got
15 it. Okay. Mr. Hansel, does that take care of --

16 MR. HANSEL: That takes care of it, Your Honor.
17 Thank you.

18 THE COURT: Okay. And everybody is served. And
19 the consolidated amended complaint will be filed timely in
20 April, is that --

21 MR. FINK: Yes. We are not asking for any
22 different date, that still works just fine for us.

23 THE COURT: Okay. Good. Heater control panels?

24 MR. FINK: Actually I'm not aware of any issue on
25 heater control panels that anybody needs to bring to the

1 Court's attention, but I was wrong.

2 MR. RAITER: Good morning, Your Honor.

3 Shawn Raiter on behalf of the automobile dealers. The only
4 correction or supplement to this agenda is that in the auto
5 dealer cases we have accomplished service on Apps Electric
6 North America and Apps Automotive, Inc., so those are two
7 additional services that have been completed, and the others
8 remain underway.

9 THE COURT: Okay.

10 MR. ZAPALA: Good morning, Your Honor. Adam Zapala
11 for the end payors. We are in the process of serving the
12 newly-added defendants, we don't expect that there is going
13 to be any problems.

14 THE COURT: Excuse me. Can I have your name again?
15 You're not Mr. Persky who I had --

16 MR. ZAPALA: No, Adam Zapala for the end payors.

17 THE COURT: Okay.

18 MR. ZAPALA: So we are in the process of serving
19 the newly added defendants, the Apps defendants. We have
20 reached agreements in principle with the other defendants for
21 them to accept service. We are hopeful that consistent with
22 the template that has been used in other cases that we will
23 be able to reach an agreement with those defendants.

24 THE COURT: And in your case the consolidated
25 amended complaint was filed in February, was it?

1 MR. ZAPALA: It was filed -- yeah, correct.

2 THE COURT: The end of February.

3 MR. ZAPALA: The end of February, right, and that
4 was also filed under seal.

5 THE COURT: Okay. Thank you very much.

6 MR. ZAPALA: Thank you.

7 MS. STORK: Good morning, Your Honor. Anita Stork
8 from Covington on behalf of the Apps defendants. I am not
9 aware that the automobile dealers have successfully served
10 Apps North America. They purported to serve a copy of the
11 complaint on an entity in Michigan but Apps North America is
12 in California, so I wanted to point that out.

13 I also wanted to point out that service has not
14 been effected on Apps Electric Company, Limited, which is the
15 parent company located in Japan, so I just wanted to make the
16 record straight on that.

17 THE COURT: Okay. What about plaintiffs on that,
18 does somebody want to talk to what is going on with the
19 service there? It sounds like a wrong company was served, is
20 that what you are saying, or it should have been served in
21 California instead of --

22 MS. STORK: What I'm saying with respect to the
23 automobile dealer complaint is that it was served on an
24 entity in Michigan but the proper place of service for Apps
25 North America is in California, which is my understanding

1 from the client.

2 THE COURT: Excuse me just one minute.

3 (An off-the-record discussion was held at

4 10:36 a.m.)

5 THE COURT: Sorry. Okay. Are you going to speak
6 to --

7 MR. RAITER: Your Honor, we can obviously sort this
8 out but our understanding is that we served a registered
9 agent -- a Michigan registered agent for Apps North American,
10 and we would believe that's proper service but we can work
11 that out with defense counsel.

12 THE COURT: Okay. While you are here today you can
13 discuss it?

14 MS. STORK: Yes, absolutely.

15 THE COURT: Okay. All right. The deposition issue
16 is the same as we have discussed before, correct?

17 MR. FINK: That's correct, Your Honor.

18 THE COURT: Okay. So then we go on to bearings.

19 MR. FINK: With respect to bearings, there --
20 again, no issue on the service. And the order that has been
21 entered, the case-management order, there is an issue on the
22 discovery plan, and Gene Spector, one of the interim co-leads
23 who is on the bearings case, will -- can speak to that.

24 THE COURT: Okay. Let me indicate that there were
25 orders -- we had a problem with the orders in the bearings

1 and the occupant safety, I believe, those two, there were six
2 orders that were stipulated to and I just want to indicate
3 that they were entered this morning. The problem with them
4 is the way they were initially submitted our system doesn't
5 allow us to separate them, and so they all went off as
6 something for the Court to look at later. I think that
7 Bernie talked to Mr. Iwrey about that. Then they were
8 resubmitted -- this is very interesting because I'm learning
9 more about CM/ECF than I care to know really, but they were
10 resubmitted, they had the case number, proposed order, case
11 number, proposed order, case number, proposed order, but
12 since it had the same title, proposed order, they would be
13 overriding each other and she didn't separate them, but
14 anyway I'm sure she is working that out with you and now we
15 know that. I'm sorry about the delay but it was -- it was
16 just one of those things that happen.

17 MR. FINK: Your Honor, I've spoken with Mr. Iwrey
18 since he's spoken with your case manager, and we can avoid
19 that -- we are pretty certain we can avoid that problem in
20 the future, and we will do our best.

21 THE COURT: Okay.

22 MR. FINK: We are all learning that with this many
23 cases in this many different contexts, the electronic system,
24 as efficient as it is, is not as intuitive as a human being.

25 THE COURT: We thought we had it all figured out

1 perfectly, right? Wait until we get to the next topic
2 because I have something else.

3 MR. SPECTOR: Good morning, Your Honor.

4 Eugene Spector on behalf of the direct purchaser plaintiffs.

The issue is both in the bearings case and in the occupant safety systems cases, the same issue, and it has to do with the entry of a discovery plan. There are only really two disputed issues with regard to that discovery plan; the first being with regard to the production of documents produced to the Department of Justice by those defendants who have pled guilty, and the second issue being that of when initial disclosure should be made by those defendants and the plaintiffs also who have not pled guilty. Our position is, as it has been in the other cases, following basically the template of what happened in wire harnesses, instrument panel clusters, heater control panels --

17 THE COURT: Let me ask you a question about those.

18 MR. SPECTOR: Sure.

19 THE COURT: As I understood, when wire harness
20 turned over these documents -- when the defendants in wire
21 harness turned over these documents, the consolidated amended
22 complaint was filed, is that correct or not?

23 MR. SPECTOR: I believe that is correct, Your
24 Honor, that was the structure at that point. However, in the
25 heater control panel case and the instrument panel cluster

1 case that's not the case; the documents have been turned over
2 prior to the filling of the consolidated amended complaint.
3 Quite honestly that is not atypical in cases where there are
4 guilty pleas. In fact, I think Judge Alsup in the graphic
5 processing units antitrust litigation in the Northern
6 District of California dealt with that issue, it is a case in
7 which the defendants rely on their papers, and he in that
8 case did stay discovery of those documents because there were
9 no guilty pleas. What he said was, nor in this case where it
10 is almost certain that the complaint is viable, such is often
11 true where guilty pleas are already or have already been
12 entered in a parallel criminal case, of course, in such
13 conditions at least some discovery should ordinarily proceed
14 despite any pending motion to dismiss. And in that case
15 there had been no indictment and so therefore he stayed
16 discovery.

17 I think that's the issue here, I think virtually
18 every case that the defendants relied on except I think one
19 did not have a guilty plea and therefore the documents were
20 not ordered produced at that point.

21 THE COURT: Were those cases all -- I know they
22 weren't but were these cases all pre consolidated complaint?

23 MR. SPECTOR: The cases where there has been a
24 guilty plea, yes, they were pre consolidated amended
25 complaints.

1 THE COURT: So let me ask you this: If it is
2 pre consolidated amended complaint and they have to turn over
3 these documents, do they turn them over to every individual
4 case although here I don't think we have a lot of cases
5 anyway?

6 MR. SPECTOR: Well, there's three groups basically
7 that we're working on discovery, they are all subject to the
8 protective order in the case and therefore they will be
9 confidential, they can only be used for purposes of the
10 litigation. It is -- there is no issue other than whether it
11 is appropriate where there has been a guilty plea for those
12 documents to be produced. In the bearings case we don't have
13 that issue because there are no guilty pleas and so therefore
14 there are -- there are no documents to be turned over.
15 However, if a guilty plea does occur under the terms that we
16 have proposed in the plaintiffs' order --

17 THE COURT: You said something --

18 MR. SPECTOR: -- 30 days thereafter they would
19 produce the documents.

20 THE COURT: 30 days after the guilty plea --

21 MR. SPECTOR: Yes.

22 THE COURT: -- because you said something somewhere
23 about -- let me pull those orders, okay, of the agreement to
24 plea versus the plea?

25 MR. SPECTOR: Yes.

1 THE COURT: So the plea would not have necessarily
2 have taken place?

3 MR. SPECTOR: Correct. If there an announcement by
4 the Department that we have an agreement for a plea to be
5 entered at that point it is basically the same as the plea
6 having taken place in terms of what burden there would be on
7 the defendant whether it is appropriate for that kind of
8 discovery to take place because you're fundamentally in the
9 same position you would be in as if a guilty plea had taken
10 place.

11 THE COURT: Okay. Thank you.

12 MR. SPECTOR: Thank you, Your Honor.

13 THE COURT: Who is arguing?

14 MR. DAVIS: Good morning, Your Honor. Ken Davis
15 with the Lane Powell law firm. I represent Nachi Fujikoshi
16 Corporation and Nachi American, which are named as defendants
17 in some, but not all, of the individual complaints in the
18 bearings matter. I think to answer your question, Your
19 Honor, I think there are 13, maybe 14, current complaints in
20 bearings --

21 THE COURT: 13 or 14?

22 MR. DAVIS: -- from the three primary groups just
23 mentioned.

24 Your Honor, the first thing I would like to do is
25 dispel this myth that there is some sort of template out

1 there that was established in the earlier cases, that's
2 simply not the case for three primary reasons.

3 First of all, in the wire harness cases the issue
4 with respect to DOJ documents and with respect to initial
5 disclosures was subject of an agreement amongst the parties
6 as part of a broader compromise involving all of the
7 discovery issues. That's not the case here obviously. The
8 parties have not been able to agree on these issues. So this
9 issue with respect to DOJ documents has never been presented
10 to the Court for adjudication before, and Your Honor has not
11 had the opportunity to review the authority by Judge Cox of
12 this District as well as the Sixth Circuit -- and that's in
13 the refrigerant case, or the Sixth Circuit in the Travel
14 Agents case as well, which strongly suggests that this Court
15 needs to take a very hard look before it allows any discovery
16 at all before the motions to dismiss are resolved. And, Your
17 Honor, you have hit upon -- so that's the first difference.

18 The second difference why this is not a
19 template-type case is the reason already alluded to by
20 Mr. Spector, and that is in the bearings case there are no
21 guilty pleas. In the graphic processors case that
22 Mr. Spector referred to, it was precisely because there was a
23 guilty plea that the court said, okay, well, in this case it
24 is plausible that the complaints can be framed around that
25 guilty plea. Here we don't have a guilty plea so there is no

1 actual guilty plea upon which the plaintiffs can hang or
2 frame their complaints here. This is discovery in search of
3 a claim, that's specifically not allowed under the federal
4 rules.

5 Here, Your Honor, we have a case where there is no
6 guilty plea, we have some defendants that are named in some
7 lawsuits but not others, we also have differences amongst the
8 various complaints with respect to the definition of the
9 product. In some of the complaints the product is defined as
10 automotive bearings, in other complaints the product is
11 defined as not only automotive bearings but also industrial
12 bearings. We don't know what the consolidated amended
13 complaints are going to say in that regard. We don't know
14 what is relevant to the extent that any documents have been
15 produced to the DOJ or initial disclosures were going to take
16 place. We don't know what is relevant or what is not
17 relevant because we don't know what the consolidated amended
18 complaints are going to say with respect to either of those
19 issues or whether all the parties that are named in some
20 complaints but not other complaints will eventually be named
21 in the consolidated amended complaints, so why are the
22 plaintiffs seeking this pre-complaint discovery?

23 And I disagree with Mr. Spector with respect to the
24 authority that was cited by the plaintiffs; this is not
25 routine or common. In fact, in the Flash Memory case and the

1 Toyota case, these are cases cited by the plaintiffs, that
2 discovery with respect to DOJ production was ordered after
3 the resolution of the motions to dismiss, not just the
4 consolidated amended complaints but after the motions to
5 dismiss. Furthermore, the pharmaceutical case and I think
6 the S-RAM case involved orders with respect to discovery
7 after the consolidated amended complaints. And again the
8 graphic processors case, Your Honor, I think lays this out
9 that you should not be entitled to get discovery to hunt for
10 a claim upon which to frame your complaint. The complaint
11 needs to rest on the facts as they exist today, should be
12 tested in due course by the motions to dismiss and properly
13 heard by the Court.

14 THE COURT: Can you distinguish refrigerants --

15 MR. DAVIS: Refrigerants from processors?

16 THE COURT: Yes.

17 MR. DAVIS: That was a case before Judge Cox, Your
18 Honor.

19 THE COURT: Was that before Cox? Okay. Yeah, not
20 Borman.

21 MR. DAVIS: It is attached as one of the exhibits
22 to the joint submission, Your Honor.

23 THE COURT: Right, okay.

24 MR. DAVIS: The Travel Agents case was a
25 Sixth Circuit case. Both of those cases -- the Circuits come

1 out different in the interpretation of Twombly, but I submit
2 under the Travel Agents case, and as construed by Judge Cox
3 in the refrigerants case, the Sixth Circuit is very reluctant
4 to order discovery prior to filing -- file to the resolution
5 of motion to dismiss, and those two authorities I think
6 should control this case. That at the very least prior to
7 the amended complaints being filed -- consolidated amended
8 complaints being filed but even more so it should wait until
9 after the resolution of the motions to dismiss before we
10 address these issues. At that point we will know what the
11 claims are, if any, who the defendants are and what the
12 product definition is and whether or not there are any viable
13 claims upon which to pursue documents that may have been
14 produced to the DOJ as well as initial disclosures.

15 THE COURT: Are there any pending pleas in the --

16 MR. DAVIS: In bearings, no, Your Honor. I should
17 say, Your Honor, I'm only speaking on behalf of the bearings
18 defendants because OSS is situated slightly differently in
19 that regard.

20 THE COURT: Okay. Thank you.

21 MR. DAVIS: Thank you.

22 MR. FENNEY: Your Honor, Jim Fenney on behalf of
23 TRW and TRW Deutschland. We are in the OSS case, and simply
24 indicate at this time on behalf of those defendants, Your
25 Honor, we agree with counsel with respect to the presentment

1 of the arguments with respect to bearings, but I would like
2 to say in addition to that, and not to belabor the point,
3 that the plaintiffs in their submission, Your Honor, other
4 than citing the fact of a template and a few needle in a
5 haystack cases that they have collected together, have not
6 dealt with the law in the Sixth Circuit and have not
7 articulated a single legitimate reason why they need this
8 information before the consolidated amended complaints are
9 filed and before this Court resolves the motions to dismiss.

10 There is no concern here about documents to be
11 preserved, there is no concern here about preserving
12 testimony. These are the commonly cited reasons for this
13 sort of activity. There is certainly no provision in the
14 federal rules that allows for pre-complaint discovery, and
15 it's simply not appropriate, Your Honor. Thank you.

16 THE COURT: Wait a minute. In the -- in the OSS
17 cases how about pleas?

18 MR. FENNEY: There are pleas by some defendants.

19 THE COURT: How many pleas?

20 MR. FENNEY: Two.

21 MR. SPECTOR: I believe two, Your Honor.

22 THE COURT: Okay.

23 MR. FENNEY: Thank you, Your Honor.

24 MR. WILLIAMS: Your Honor, Steve Williams for the
25 end payors. I know Mr. Spector is going to respond, but I

1 had to because so much of what was just said in the argument
2 before was wrong so I don't -- I know the Court is going to
3 read the authorities. I was lead counsel in S-RAM. The
4 Government documents without any guilty pleas were ordered
5 produced at the first case-management conference, not after
6 complaints or after motions to dismiss. In GPU there was not
7 a guilty plea. I know the Court is going to look at it, but
8 in Toyota and in the drug cases what was just said to you was
9 not correct, but I think there is just this misstatement of
10 the law that we are pre-complaint. We are not pre-complaint,
11 complaints are filed. There is no automatic stay of
12 discovery; this is not a PSLRA case. And, you know, all of
13 this flows from Twombly, and all Twombly said is as long as
14 the court thinks discovery is likely to produce evidence
15 supportive of the alleged antitrust violation discovery
16 should go forward. We have guilty pleas, they've admitted to
17 the antitrust violation. So really the issue that I think is
18 here is, is there any burden to defendants from solely
19 producing what they have already collected and produced to
20 the Department of Justice? And under 26(c) it is their job
21 to tell this Court what that burden is, it is not our job to
22 justify what guilty pleaders should tell us, we have to prove
23 our need for the discovery. That's not the law. So I know
24 the Court will look at the law but I just want --

25 THE COURT: How about bearings where there is no

1 guilty plea?

2 MR. WILLIAMS: They don't have to produce anything,
3 they don't have to produce until there are guilty pleas, so
4 there is no issue there. And, you know, again, I had to
5 comment just because of the misstatements of the law but the
6 law is discovery is not automatically stayed and when there
7 are guilty pleas in an antitrust case, they have admitted to
8 what we filed our complaints about, unless they can
9 demonstrate burden to the Court, which they can, the
10 discovery should go forward. It is very little. We did not
11 come in and say we want depositions, we want to serve
12 document requests or any of that. We are just saying give us
13 what you've already produced to the government, and they have
14 given you no reason to say no. Thank you.

15 THE COURT: Okay.

16 MR. SPECTOR: Your Honor, Gene Spector again. I
17 just wanted to clarify one thing. With regard to bearings,
18 we are not asking for any documents to be produced because
19 there are no guilty pleas. We are only asking for the
20 documents to be produced in the occupant safety system cases
21 because there are guilty pleas, and the reasons for that have
22 been explained. I thought Mr. Williams explained very well
23 his experience in the S-RAM case and in the other cases, and
24 the cases are all put -- set forth in our papers, but I just
25 wanted to make sure that you understood the difference

1 between those two cases and the burdens that were at issue.

2 THE COURT: Okay.

3 MR. SPECTOR: Thank you, Your Honor.

4 THE COURT: I think that the issue in terms of the
5 OSS cases is the easier issue, and clearly there were guilty
6 pleas, there were complaints filed really based on the same
7 alleged facts as the guilty pleas, so I think that this is
8 something that should move along. The complaints have been
9 filed, granted the consolidated amended complaints have not
10 been filed but there are complaints filed, and the
11 information has -- is gathered because it has been given over
12 to the Department of Justice so it seems to be appropriate to
13 do it at this time, and it also seems like it would save the
14 defendants further work in the future with discovery because
15 they now have it all set.

16 So I think given that -- given as was said in one
17 of the cases that it is almost certain the complaint is
18 viable, the Court will order that in the -- those cases where
19 there are guilty pleas, the documents which have been
20 produced to the Department of Justice should be turned over
21 to the plaintiffs -- plaintiff groups.

22 MR. SPECTOR: Thank you, Your Honor.

23 MR. SCHMIDTLEIN: Your Honor, just one point of
24 clarification. John Schmidlein for the Takata defendants.
25 We are in OSS but we have not pled guilty. Some defendants

1 in OSS have pled guilty, others have not. Just to clarify,
2 your ruling is that this only applies to defendants who have
3 pled guilty?

4 THE COURT: This would apply to your defendants who
5 have pled guilty and turned the documents over to the
6 Department of Justice.

7 MR. SCHMIDTLEIN: Thank you, Your Honor.

8 THE COURT: Okay. How about the -- anything else
9 on the second issue, which is the Rule 26?

10 MR. FINK: No. I don't think we have any issue on
11 that, I'm not aware that there is any controversy about --

12 THE COURT: Well, there was.

13 MR. FINK: I apologize, I thought --

14 MR. SPECTOR: No.

15 THE COURT: Mr. Spector.

16 MR. SPECTOR: There is still the 26(a)(1) issue as
17 to when those disclosures should be made. What we have done
18 in the other cases is we have provided that those who do not
19 produce their Government documents at the time that the
20 Government documents are produced by the defendants who have
21 pled guilty, those defendants who have not pled guilty should
22 make their 26(a)(1) disclosures, as should we, as should the
23 plaintiffs, and that's what we have asked for in the proposed
24 order.

25 THE COURT: Okay. Defense?

1 MR. DAVIS: Your Honor, should I?

2 THE COURT: Yes.

3 MR. DAVIS: For the record, Ken Davis. Your Honor,
4 with respect to the initial disclosure, the real problem here
5 is to do these before the filing of a consolidated amended
6 complaint leaves the defendants in a very unenviable position
7 to have to do initial disclosures with respect to each
8 individual complaint that has been filed to date. Again, I
9 pointed out to Your Honor the differences --

10 THE COURT: I agree with you, I agree with that. I
11 think that that's a little more difficult because of the
12 number of cases and how you would have to respond to each of
13 them.

14 MR. DAVIS: Very well. I won't belabor the point
15 then, Your Honor. Thank you.

16 THE COURT: So, yes, I do believe that any other
17 initial disclosure should wait until the consolidated amended
18 complaint is filed.

19 MR. SPECTOR: If I might, Your Honor, then if we
20 are going to do that could we set a time period by which this
21 is done, 30 days after the CAC, for example, would that work
22 for people so that we have a date certain at least?

23 THE COURT: Defendants, 30 days?

24 MR. DAVIS: I can't speak on behalf all defendants.

25 THE COURT: Well, I think 30 days is plenty. You

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1 know it is coming -- you know most likely it will come so --
2 we know there will be a consolidated amended complaint so
3 what am I talking about, you do know it is coming, and
4 therefore 30 days after its filing should be plenty.

5 When is the date for the filing of the
6 consolidated -- one of them I thought was way out in July?

7 MR. SPECTOR: One is -- I believe the occupant
8 safety systems' complaint is due June 3rd I believe because
9 that's a Monday, and the bearings consolidated amended
10 complaint I believe is July 15th, Your Honor.

11 THE COURT: Okay. When you prepare your order add
12 30 days and make it -- if it is a weekend make it a Monday,
13 et cetera, and that's good.

14 MR. SPECTOR: Thank you, Your Honor.

15 THE COURT: Okay. All right. So if you would then
16 prepare the order and have it submitted to the Court within
17 the next few days with the dates in?

18 MR. SPECTOR: Yes, Your Honor. Thank you.

19 THE COURT: Is there anything else in that order
20 before we proceed?

21 MR. SPECTOR: I believe everything else was agreed,
22 Your Honor.

23 THE COURT: Okay.

24 MR. PERSKY: Your Honor, circling back -- this is
25 Bernard Persky for the end payors. Just circling back to

1 wire harnesses.

2 THE COURT: That seems like such an old case.

3 MR. PERSKY: The stipulation of dismissal without
4 prejudice of FAI from the case, we also submitted, the three
5 plaintiffs' groups, a proposed order that I think would
6 effectuate the parties' agreement that in the event that
7 there will be an amended pleading assuming the Court either
8 upholds the complaint or it dismisses the complaint and gives
9 leave to replead, we would be able to substitute FAA for FAI,
10 it is a proposed order, there is no dispute that it is under
11 submission to Your Honor.

12 THE COURT: I actually looked at that and signed it
13 yesterday, so that order is done. It may not actually be in
14 the system given our little confusion but I have reviewed
15 that.

16 MR. PERSKY: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. HANSEL: Excuse me, Your Honor. Greg Hansel,
19 again, in the wire harness case. The direct purchasers are
20 not within the scope of the order that Mr. Persky and you
21 were just discussing, and we are working on it and hope to
22 submit something to the Court shortly that is very similar,
23 if not identical. Thank you.

24 THE COURT: Okay. I don't remember the title, if
25 we can -- we will have to look at that to make sure the

1 direct purchasers are clearly not in that at this point.

2 Would you make a note of that, please, Bernie?

3 Okay. All right. Mr. Fink?

4 MR. FINK: Your Honor, with respect to the next
5 item, Roman numeral VII, the new cases, the new cases
6 identified the auto dealers' intentions but there is -- on
7 these subjects but there is no reference to the direct
8 purchaser plaintiffs, and Steve Kanner will speak to the
9 direct purchaser plaintiffs in terms of the five new cases
10 that were filed -- or five new products.

11 THE COURT: Okay. Just one minute, I want to read
12 this order. Okay. That order that we were talking about was
13 the dealership plaintiffs --

14 MR. PERSKY: Your Honor, it turns out that two
15 groups of plaintiffs have filed, the directs have not yet,
16 and the order that was filed before Your Honor --

17 THE COURT: But the proposed order I have is for
18 the dealerships only. Is there a second order for the end
19 payors? There are two orders?

20 MR. PERSKY: We filed an earlier order on behalf of
21 the end payors.

22 THE COURT: Okay. Got it.

23 MR. PERSKY: Okay. Thank you.

24 THE COURT: Sorry but if I don't do it when I think
25 about it it causes more problems later. Thank you.

1 MR. KANNER: Good morning, Your Honor.

2 Steve Kanner, interim co-lead, on behalf of direct purchaser
3 plaintiffs. Item 7, which is generally titled new cases,
4 lists the various cases which have been filed by the end
5 payor plaintiffs. There are notations, of course, that the
6 automobile dealer plaintiffs intend to file.

7 What I would tell this Court with respect to the
8 intention of the direct purchasers is that it would be
9 reasonable to assume that we will be adding cases to the
10 list, I can't specifically indicate whether it would be each
11 of these cases. Certainly one of these cases, the
12 anti-vibration rubber parts, is a case in which there has
13 been at least one guilty plea on the part of the defendant,
14 and I would preface these remarks by indicating that, as the
15 Court may be well aware, Deputy Assistant Attorney General
16 Scott Hammond spoke in the last few weeks in Detroit to one
17 of the Bar associations and indicated that the prosecution of
18 these various auto parts cases is and will continue and we
19 can expect additional prosecution to be announced. The
20 direct purchaser plaintiffs are well aware of many of these
21 prosecutions and are continuing to work towards the goal of
22 filing these cases when we believe it is appropriate. So as
23 they say, more to come.

24 THE COURT: More to come. Okay. In terms of these
25 cases that were filed in the Eastern District, we have to

1 follow those up to make sure they get here. I'm not sure
2 right now where they are filed, I did not --

3 MR. REISS: Good morning, Your Honor. Will Reiss
4 on behalf of the end payors. Yeah, right now one of the
5 cases is pending with you. I can tell you which judges;
6 windshield wipers case is before Judge Hood, starters is with
7 you, the radiators case is with Judge Murphy, the alternators
8 case is with Judge Edmunds, and anti-vibration is also with
9 Judge Murphy. I know we have contacted their chambers to see
10 if we can get them relayed to you, but my understanding is
11 they are still pending.

12 THE COURT: Okay.

13 MR. KANNER: One other thing I would add, Your
14 Honor, is that all of these products have been referenced as
15 prosecutions by the JFTC, the Japan Fair Trade System, the
16 analog to the U.S. Department of Justice Antitrust Division,
17 and I believe there were findings and fines in Japan, and we
18 expect there to be criminal actions announced in the
19 United States.

20 THE COURT: All right. Okay. So we will try and
21 gather all of these from the other judges. I mean, they will
22 get to it as soon as they look at it I'm sure, but I don't
23 want to lose any of them so we will keep following them to
24 make sure that they get onto the docket here and part of the
25 MDL.

1 All right. The next issue we put on here is
2 briefing procedures. Let me say that as to this issue I will
3 hear you, but I just want to say a lot of this is to make it
4 easier here, I don't know that it would make it easier for
5 you or if it makes any difference to you, but I have one
6 clerk working on this plus she has other work so it is a
7 little bit difficult. We kind of laugh here as we read all
8 of these pages and we go over all the people that you have
9 working on your briefs, and poor Molly, she is kind of
10 handling it all by herself, she is doing a marvelous job, but
11 it is taking us longer because I just can't let everything
12 else go, so we are kind of putting it together.

13 But I will tell you that I believe the rulings on
14 the motions on the wire harness, the motions to dismiss on
15 the wire harness cases will come out probably the end of
16 April, beginning of May. That's not to say some of them
17 aren't done, but I'm holding them all until I get all of the
18 motions done so you will get them all at one time.

19 Okay. And then in terms of briefing, we talked a
20 little bit about this before that the argument and authority
21 have to be in the body of the brief, there can be a summary
22 in an appendix, but the cases you are relying on as you go
23 through have to be in the body, not a footnote, please put
24 them in the body. Yes, it doesn't read so well because
25 sometimes we have to skip over lots of cites but it still

1 makes it easier for us to read with them in the body.

2 And as to the state cases, antitrust, whatever
3 claims are going to be in the state cases, including the
4 consumer protection, we would like those briefs done by state
5 as opposed to by issue. I can see why they were done by
6 issue but when we are doing them by state we have things all
7 over the place, it is just much easier to have everything by
8 state, and I think that will make it easier as we go along
9 with the other cases to see what each state's law is. This
10 is going to, I believe, probably take a lot more pages and
11 that's why I put on here the page-limit extension because I
12 would rather that you had more pages and have it organized
13 this way. Okay. You want to --

14 MR. WILLIAMS: I don't think I have much to say. I
15 think all of us agree we would like to make this easier for
16 the Court. I think the idea of state by state organization
17 will do that, but I can't speak for the defendants as to if
18 they need more pages or not. The only question I would ask
19 just for clarification would be in describing a summary of
20 authority in appendix, whether that's simply identification
21 of authority or any discussion, parentheticals, because in
22 the briefing on the last round I think where the challenge
23 came is in the appendixes were parentheticals that would then
24 set forth propositions that cases stood for, then we
25 responded and the defendants responded.

1 THE COURT: It was like we were arguing indices to
2 indices, and that's what I don't like. If you are going to
3 argue it put it in the brief. If you want to do a summary
4 chart or something, if -- I like summary charts, by the way,
5 I'm not saying I don't like them, I just also like to be able
6 to read the brief as it goes along, but you can't raise new
7 arguments in exhibits no matter what they are. You can do a
8 summary, but no new arguments, don't argue the cases or
9 anything in the index.

10 MR. WILLIAMS: We have had --

11 THE COURT: You have to put it in the body.

12 MR. WILLIAMS: We had some discussions and it seems
13 to me it probably makes sense to let the defendants tell us
14 if they want more pages.

15 THE COURT: I want them to tell me how many more
16 pages, that's why I didn't put a number down here.

17 MR. HERRMANN: Good morning, Your Honor,
18 Fred Herrmann, Kerr, Russell & Webber, appearing on behalf of
19 Nippon Seiki defendants and the IPC defendants and speaking
20 on behalf of the other IPC defendants. The last thing we
21 want to do, Your Honor, is make this more difficult for the
22 Court.

23 THE COURT: I know that.

24 MR. HERRMANN: This is of particular urgency of the
25 IPC defendants who have their briefing deadline due this

1 coming Tuesday, and this issue relative to the restructuring
2 that the Court asked for was not the subject of our meet and
3 confer with plaintiffs, and the other defendants certainly
4 haven't had an opportunity to consider this either, so I
5 can't represent for all of the defendants what page extension
6 they may seek.

7 The first thing I would ask of the Court because
8 our briefing deadline is imminent --

9 THE COURT: I can change that.

10 MR. HERRMANN: We have been putting this brief
11 through the sausage grinder to get everything in the brief as
12 the Court asked us to do. It is going to take frankly a
13 significant additional effort to reorganize this brief the
14 way the Court has asked here in the agenda item.

15 So our first request of the Court would be if we
16 could exempt the IPC defendants from this requirement for
17 their briefing, and if not, if the Court would like us to
18 rework the brief, we will need an appreciable page extension
19 and we would ask for a week's extension to get that
20 accomplished.

21 THE COURT: I am going to ask you to rework your
22 brief. You need a week extension to do that, the Court will
23 allow you -- is that sufficient, one week?

24 MR. HERRMANN: The time is sufficient, Your Honor,
25 we'll still need to address the pages.

1 THE COURT: We'll get to the pages but, yes, I will
2 allow you to rework it and give you one more week. Okay.

3 MR. HERRMANN: Thank you, Your Honor.

4 THE COURT: Now, as to the page limits, I had a
5 difficult time with that because I was trying to add up all
6 the page limits, you know, the additional pages that you had
7 in the indices and there's a lot, so I decided I would just
8 let you tell me -- you don't often get this opportunity so
9 you tell me.

10 MR. HERRMANN: Your Honor, the way we tried to
11 approach this is we did do a little bit of tinkering with the
12 brief as it exists under the old format, and what we tried to
13 take into consideration is if we briefed end payors and
14 dealers in separate briefing and addressed this the way the
15 Court would like we think we would need at least 40 pages per
16 brief. To put them together it was frankly a challenge and
17 we were considering asking Your Honor for additional pages
18 just to meet the previous format to get everything up out of
19 the footnotes and into the main body of the brief, and that
20 would have put us at best at 60 pages.

21 So we would think 40 additional pages to the 50
22 that was discussed back in December, we can get that done in
23 those additional 40 pages, so a total of 90 to get this
24 reorganization with all of the state-by-state analysis.
25 That's our best estimate, Your Honor, based on the tinkering

1 we have done and looking at all the appendixes, the arguments
2 that have been raised, and taking into account that we are
3 addressing both end payors and dealers in one combined brief,
4 we can put it all in one place and if we can get that
5 accomplished in those 90 pages we can get the state-by-state
6 structure that the Court has asked for.

7 THE COURT: Thank you.

8 MR. WILLIAMS: I would like to make an alternate
9 proposal and pick up on something that counsel said, which is
10 why not have a separate brief for the end payors and a
11 separate brief for the dealers, because to me a lot of the
12 difficulties last time was that you had arguments that might
13 relate to one group mixed in with an argument that related to
14 another, it was not always easy to keep those separated. So
15 I think it would make more sense to have -- there is a
16 separate complaint so have a separate motion directed to each
17 of those. 90 pages -- or I guess I would make it 45 each, we
18 can live with that if that's what they need.

19 THE COURT: Just a minute? Let me get Molly.

20 (An off-the-record discussion was held.)

21 THE COURT: Molly says it doesn't matter to her if
22 you separate them or you don't.

23 MR. HERRMANN: Your Honor, we disagree with that.
24 The point on the separate briefing was to analyze the pages
25 required to address all of this. We would be repeating the

1 same things in two separate briefs with end payors. The
2 legal arguments are the same. In fact, that was if we were
3 to request going back to the original format that's why we
4 formatted the briefs the way we did because you could put the
5 legal argument followed by string citations of the state law
6 that applies and supports that individual legal argument, but
7 if we now break it out into states the legal arguments remain
8 the same, the problem is the space requirements to address
9 each state. So for us, again, particularly at this hour, we
10 are on the eve of filing our papers, we would -- we have one
11 combined brief already, we would like to keep that
12 organization, we think it is more efficient for the
13 defendants, more efficient for --

14 THE COURT: I agree, you have already worked on it.
15 Let's do that, let's keep it combined. Does anybody else
16 have anything regarding number of pages, number of pages,
17 anyone disagree?

18 MR. WILLIAMS: I've just got one thing. If they
19 are going to tell you they are just repeating the same thing
20 I don't see why they need 90 pages to do that, they had 50
21 already. It's a lot of pages.

22 THE COURT: I have to tell you something, I got an
23 opinion once from the Court of Appeals, I don't remember now
24 if it reversed or didn't, to be honest with you, but it was
25 like 97 pages and, you know, I have never to this day read

1 the whole thing. Okay. Let's do it 90, we will do it
2 together, you know, if in response you find that you want to
3 separate it out maybe you could work something out in a
4 response that is separate.

5 MR. WILLIAMS: Would it be acceptable to the Court,
6 they can file their one brief because it is already almost
7 done apparently, but our groups file our own responses?

8 THE COURT: You can file your own responses, sure.

9 MR. WILLIAMS: Thank you.

10 MR. SANKBEIL: William Sankbeil for Kerr Russell.
11 Not that my partner is ever vague, but March 26th is the
12 date, is that also for the direct motion also? Do you want
13 both motions filed on the same date, Your Honor, is the
14 question?

15 THE COURT: Yes, everything will have --

16 MR. SANKBEIL: So it is extended to March 26th?

17 THE COURT: Yes, everything will get the extension.

18 MR. SANKBEIL: Thank you.

19 THE COURT: Yes, you don't have to abide by it but
20 you may.

21 MR. SANKBEIL: Pardon me?

22 THE COURT: You don't have to wait a week but you
23 certainly may.

24 MR. WILLIAMS: One last thing on the briefing, if
25 we file singly, meaning dealers and end payors, we will do

1 90; if we file separate briefs we will do 45 each?

2 THE COURT: That's correct.

3 MR. WILLIAMS: Thank you.

4 THE COURT: Okay. Anything else on briefing?

5 (No response.)

6 THE COURT: All right. The next issue, I would
7 like to take this out of order, I would like to skip down to
8 the electronic case-management protocol order. We do have
9 some problems. You may have noticed already with our letters
10 now that we have the additional parts, you know, it gets --
11 we can only use one letter so it gets confusing. We all know
12 wire harness and W, you know that, but as we add the parts it
13 is becoming meaningless to me, and I don't want anybody to be
14 confused by a letter in the beginning of the case number, so
15 I'm really going to do away with those letters. I don't
16 think we need to worry about it, otherwise we would have to
17 sit down and pick nice letters for -- you know, Q is for
18 Avenue Q, I don't know, so we are not going do the letters.
19 As long as we have the numbers that would distinguish it, so
20 a part would have a number and you will just have to remember
21 what that number is.

22 I wanted to see, and this is one of the things on
23 our agenda with IT, if we could put on the 2311 face page,
24 the first page, if we can put an identification like bearings
25 is 5, I believe, so it would be 500 or whatever, so we will

1 see if we can make that a little easier, but otherwise you
2 will have to keep a list of 1 to 11 right now as to which
3 part is which, so there will be that. I will do a
4 protocol -- another protocol order and send it out to you
5 because I have one other issue, and that is now we have these
6 parts that the case numbers are '13 dash whatever and they
7 are going into a '12 -- they are coming under a year '12
8 number in the electronic filing, so I just didn't think of
9 that when we started and how it would fit in there. I think
10 it is going to be okay but I don't know that. We are going
11 to discuss this with IT, and then we'll enter another
12 protocol which hopefully will be very similar to what you
13 have absent the letter. Okay.

14 MR. FINK: Of course, Your Honor, on that, if your
15 staff would like to consult with Mr. Iwrey and the liaison
16 counsel we are all happy to do that. We appreciate the Court
17 seeing this. We were stunned when the indirects filed
18 another W case, horrified truthfully, and then to add insult
19 to injury --

20 THE COURT: You are very protective of your W,
21 aren't you?

22 MR. FINK: Yes, yes, yes, I am, Your Honor. And
23 then when they would file alternators and anti-vibration
24 rubber parts at the same time they really forced the issue,
25 and as upset as we are about it -- we thought we could solve

1 it, by the way, we thought windshields wipers could be called
2 squeegies but then they filed starters at the same time.

3 THE COURT: I know. It is interesting all the work
4 on that and we thought we had it all done -- oh, well. Okay.
5 It is just something that I'm glad that it came up because it
6 may come up in the future as these parts -- if there are more
7 parts, which it looks like there may be, and we don't even
8 know that they will be in '13, right, I mean, they could be
9 in '14, so we might have this continue.

10 MR. FINK: Your Honor, my son is a practicing
11 attorney.

12 THE COURT: He may be taking over for you.

13 MR. FINK: We don't intend to stop in '13, '14,
14 '15, we've got plans for this case.

15 THE COURT: Okay. All right. Then the date for
16 the next status conference is quite controversial but I'm not
17 going to let you argue that, I have my own feelings and I'm
18 going to do this, and that is I like to keep track of this.
19 You do not have to come if you don't want to, if you have --
20 if you have your liaison or you have somebody you want to
21 appoint just to be here to be updated, and I'm very sincere
22 about that, feel free to do that, I'm not trying to make it
23 difficult for you, but I do want to keep these updates going
24 because it is very beneficial to me to see that these cases
25 are, in fact, moving along, and I always learn something

1 about what is happening.

2 I don't have a date yet for the oral argument on
3 the next step, we'll have to discuss that maybe at the next
4 conference. I am going to set the conference for July 10th,
5 it is a Wednesday, and we'll do it at 10:00, and it will be
6 simply the status conference and that's all, no motions
7 argued except if there's something like we had today on
8 discovery.

9 MR. FINK: Can I raise one issue with the Court?
10 This morning in speaking to various counsel who had come in
11 from out of town, not just on the plaintiffs' side but also
12 among the defendants, that if -- I don't know if the Court's
13 calendar can allow it, but if the status conference can be a
14 little later in the day, but not very late in the day, say
15 either 11:00 a.m. or maybe 1:00 p.m., then some folks who are
16 flying in would be able to come in that day. I see
17 somebody -- we haven't consulted or talked about this. By
18 the way, the Westin Hotel absolutely disagrees with this
19 idea. Steve Williams apparently may have an argument to the
20 contrary.

21 MR. WILLIAMS: It is -- I don't want to bother the
22 Court with it, it is the opposite issue for the west-coast
23 people who can't get out.

24 MR. FINK: If it ain't broke, Your Honor, maybe --

25 THE COURT: I thought you were going to say a

1 different day and I went back and read the transcript and saw
2 you liked Wednesdays, so we are keeping it on Wednesday, but
3 if it is a different time I certainly could start it at
4 11:00 if that's beneficial to anybody.

5 MR. FINK: That would be great because some folks
6 could come in that morning that way, and God willing some of
7 the defendants would get stuck coming in and it will be a
8 smaller group.

9 THE COURT: We will do it at 11:00 then, and we
10 will go -- we are not breaking for lunch but this is only an
11 hour now so probably it will be another hour so that's great.
12 Okay. That's fine.

13 MR. HERRMANN: Your Honor, one more point we didn't
14 address in the context of briefing. Fred Herrmann again.
15 Reply briefs, we didn't address any page extensions relative
16 to replies, and frankly --

17 THE COURT: A very good point.

18 MR. HERRMANN: -- we want to bring that to the
19 Court's attention now.

20 We could handle it by approaching the Court later
21 when we get further on in the briefing.

22 THE COURT: How many pages do you have now on
23 reply?

24 MR. HERRMANN: We have 25.

25 THE COURT: 25?

1 MR. HERRMANN: Yeah.

2 THE COURT: 25. What are you asking for?

3 MR. HERRMANN: It's difficult to gauge, Your Honor,
4 but if you don't mind if I consult for just one moment.

5 (An off-the-record discussion was held.)

6 THE COURT: 40?

7 MR. HERRMANN: 45, Your Honor, if we could have it.

8 THE COURT: Just one minute. All right. You can
9 have 45.

10 MR. HERRMANN: Thank you, Your Honor.

11 MR. WILLIAMS: Your Honor, they are getting the
12 same amount of pages for their reply that we have for our
13 opposition, that doesn't seem right so, you know, I didn't
14 want to ask for more but if they think they need 45 I think
15 we should get 55.

16 THE COURT: Okay.

17 MR. WILLIAMS: Replies are --

18 THE COURT: We have 90, reply brief is 45, and your
19 response you want 55?

20 MR. WILLIAMS: We had 45, we will take 55.

21 THE COURT: Okay. I don't have a problem with
22 that.

23 MR. HERRMANN: Thank you, Your Honor.

24 THE COURT: 90, 55, 45. Would you put that in the
25 order -- submit an order to that effect for today's date?

1 MR. FINK: Your Honor, at the risk of suggesting
2 the incredibly obvious, this only relates to the indirect
3 cases, the direct cases -- the direct case stays the same in
4 terms of page limits?

5 THE COURT: Right, the indirect cases where you
6 have the state issues.

7 MR. FINK: Right.

8 THE COURT: Right. Everything else is the same.

9 All right. Is there anything else?

10 MR. HANSEL: Not from the direct plaintiffs, Your
11 Honor.

12 THE COURT: No. Any defendants?

13 (No response.)

14 THE COURT: I look at defendants here, but we have
15 defendants out here too, right? Yeah. All right. Thank you
16 very much for coming in. I appreciate your help. Again,
17 please, for the next conference, you know, you will get
18 notice to send in the agenda, which you are doing a great
19 job, but if some of you have anything that you want in the
20 agenda when you think of it please make a note of it so that
21 we can be sure that we keep track of this as we go along.

22 Okay.

23 Oh, I have one other issue. I'm sorry. Sit down
24 again. Is there anything -- and, Mr. Fink, I will address
25 this to you regarding the time of attorneys. Are you keeping

1 track of your time? I want some kind of an update on time.

2 MR. FINK: We do that very comprehensively, and
3 Steven Kanner can speak to that.

4 THE COURT: Okay. Mr. Kanner.

5 MR. KANNER: Thank you, Your Honor. Steve Kanner
6 again. We have, as I mentioned to you at the outset of this
7 case, instituted a monthly time-collection procedure, all of
8 the attorneys are required, and I mean everyone from the
9 people who are doing document reviews to co-lead counsel,
10 submit time sheets with details on a monthly basis. Co-lead
11 counsel reviews that time on an occasional basis to determine
12 if things might be out of whack. So far we are pleased to
13 tell you that for the most part everyone is doing what they
14 are supposed to do and in the amount of time that we have
15 allocated for it. We have the same process with expenses.

16 THE COURT: All right. I would like --

17 MR. KANNER: I expect that the indirect counsel
18 will have the same issues.

19 THE COURT: I would like for you, if you would, to
20 submit a summary to the Court of the time and the attorneys.
21 All right. I'm just curious. I'm not going to be double --
22 I can tell you, unless there is something that is really
23 outstanding, I'm not double -- I'm not guessing what you
24 should be doing or trying to correct it, I just want to see
25 what it is to this point.

1 MR. KANNER: And I'm assuming, Your Honor, that
2 would be an under-seal document --

3 THE COURT: Absolutely.

4 MR. KANNER: -- or a document filed for the Court's
5 eyes only?

6 THE COURT: Yes, absolutely.

7 MR. KANNER: We will be happy to do that. Does
8 Your Honor wish to have that for each case to date or just
9 for the wire harness, which is the bulk of the time thus far?

10 THE COURT: I think right now wire harness would be
11 sufficient, and then maybe at our next -- if you could file a
12 follow-up with the other -- with the next four cases by our
13 next status conference.

14 MR. KANNER: We can do that, Your Honor, it is well
15 within the computer's ability to put something out. I assume
16 you are looking for a general time allocation as opposed --

17 THE COURT: Yes, I want a summary. I want to know
18 generally what is going into this and who is doing it.

19 MR. KANNER: Very well, Your Honor.

20 THE COURT: Okay. Thank you. All right. Thank
21 you very much. Have a safe trip back.

THE CASE MANAGER: All rise. Court is in recess.

23 || (Proceedings concluded at 11:45 a.m.)

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1 CERTIFICATION
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I, Robert L. Smith, Official Court Reporter of
the United States District Court, Eastern District of
Michigan, appointed pursuant to the provisions of Title 28,
United States Code, Section 753, do hereby certify that the
foregoing pages comprise a full, true and correct transcript
taken in the matter of In Re: Automotive Wire Harness
Systems Antitrust Litigation • 12-mdl-02311, on Wednesday,
March 13, 2013.

11
12
13 *s/Robert L. Smith*
14 Robert L. Smith, RPR, CSR 5098
15 Federal Official Court Reporter
16 United States District Court
17 Eastern District of Michigan

18 Date: 03/28/2013
19 Detroit, Michigan

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